

ARIZONA VETERANS SERVICE COMMISSION

INTERNAL MANAGEMENT POLICY 99-03

SUBJECT: FAMILY AND MEDICAL LEAVE POLICY

EFFECTIVE DATE: April 15, 1999

1.0 POLICY: It is the policy of the Arizona Veterans Service Commission to grant job protected unpaid family and medical leave in keeping with the Family and Medical Leave Act (FMLA). An eligible employee for the purposes of the FMLA is an employee who:

- 1.1 Is a state service employee,
- 1.2 Has been employed by the State of Arizona for at least 12 months; and
- 1.3 Has been employed for at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the leave; the minimum 1,250 hours of service is determined according to the principles of the Fair Labor Standards Act, and are determined by actual hours worked. Actual hours worked does not include any type of leave.

2.0 AUTHORITY: A.R.S. §41-604, Duties and Powers of the Director, and Title VII of the Civil Rights Act of 1964 (Family and Medical Leave Act of 1993)

NOTE: If any discrepancies exist between this policy the FMLA and/or Arizona Revised Statutes or any other State policies and/or rules the FMLA and/or Arizona Revised Statute or State policy and/or rules will prevail.

3.0 RESPONSIBILITY: Employees are responsible for notifying their supervisors in advance of taking FMLA leave in accordance with procedures established by the Sick Leave policy, IMP 98-05.

4.0 DEFINITIONS:

4.1 "12-Month Period" means a rolling 12-month period measured backward from the date leave is taken and continuous with each additional leave day taken.

4.2 "Spouse" does not include unmarried domestic partners.

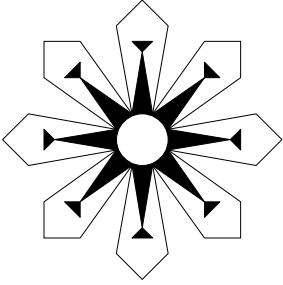
4.3 "Child" means a child either under 18 years of age, or 18 years of age or older who is incapable of self-care because of a mental or physical disability. An employee's "child" is one for whom the employee has actual day-to-day responsibility for care and includes a biological, adopted, foster or step-child.

4.4 "Serious Health Condition" means an illness, injury, impairment, or a physical or mental condition that involves:

4.4.1 Any period of incapacity or treatment in connection with or

- consequent to inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility; or
- 4.4.2 Any period of incapacity requiring absence from work for more than three calendar days AND that involves continuing treatment by a health care provider; or
 - 4.4.3 Continuing treatment by a health care provider for a chronic or long-term health condition that is incurable or which, if left untreated, would likely result in a period of incapacity of more than three calendar days; or
 - 4.4.4 Prenatal care by a health care provider.
- 4.5 “Continuing Treatment” means the employee or family member in question is:
- 4.5.1 Treated for two or more times for the injury or illness by a health care provider. Normally this would require visits to the health care provider or to a nurse or physician’s assistant under direct supervision of the health care provider; or
 - 4.5.2 Treated for the injury or illness two or more times by a provider of health care services (e.g., physical therapist) on referral form, or under the direction of, a health care provider; or
 - 4.5.3 Treated for the injury or illness by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider; or
 - 4.5.4 Under the continuing supervision of, but not necessarily being actively treated by a health care provider due to a long-term or chronic condition or disability which cannot be cured.
- 4.6 1,250 hours of services means the number of hours actually worked. Actual hours worked does not include any type of leave.
- 5.0 PROCEDURES: If the employee notifies the employer that the employee will not be returning to work, FMLA leave entitlement ceases immediately. Eligible employees will be granted job-protected unpaid family and medical leave for up to 12 weeks per 12-month period for any one or more of the following reasons:
- 5.1 The birth of a child and in order to care for such child or the placement of a child with the employee for adoption or foster care (leave for this reason must be taken within the 12-month period following the child’s birth or placement with the employee); or
 - 5.2 In order to care for an immediate family member (spouse, child, or parent) who has a serious health condition; or

- 5.3 The employee's own serious health condition that makes the employee unable to perform the function of his/her position.
- 5.4 INTERMITTENT OR REDUCED LEAVE An employee may take leave intermittently (a few days or a few hours at a time) or on a reduced leave schedule to care for an immediate family member with serious health condition or because of a serious health condition of the employee when "medically necessary."
- 5.4.1 "Medically necessary" means there must be a medical need for the leave and that the leave can best be accomplished through an intermittent or reduced leave schedule.
- 5.4.2 The employee may be required to transfer temporarily to a position with equivalent pay and benefits that better accommodates recurring periods of leave when the leave is planned based on scheduled medical treatment.
- 5.4.3 An employee may take leave intermittently or on a reduced leave schedule for birth or placement for adoption or foster care of a child with the agency director's consent.
- 5.4.4 For part-time permanent employees and those who work variable hours, the FMLA entitlement is calculated on a pro rata basis. A weekly average of the hours worked over the 12 weeks prior to the beginning of the leave will be used for calculating the employee's normal workweek.
- 5.5 PAID LEAVE An employee on family leave will be required to use appropriate accrued leave as mandated by the DOA Personnel Rules. The rules provide for exceptions to an employee having to use accrued leave, i.e., Parental Leave and leave without pay for less than 80 hours. When an employee has used accrued annual leave time for a portion of family/medical leave, the employee may request an additional period of leave without pay to be granted so that the total of paid and unpaid leave provided equals 12 weeks.
- 5.6 NOTICE REQUIREMENT An employee is required to give 30 days notice in the event of a foreseeable leave. Forms are attached to the Sick Leave policy, IMP 98-05. If an employee fails to give 30 days notice for a foreseeable leave with no reasonable excuse for the delay, the leave may be denied until 30 days after the employee provides notice.
- 5.7 MEDICAL CERTIFICATION When leave is taken because of the employee's or a covered family member's serious health condition, the employee must submit a completed "Physician or Practitioner Certification" form (see attached) and return the certification to Human Resources. Medical certification must be provided by the employee within 15 days after requested, or as soon as is reasonably possible. Refer to the Sick Leave policy, IMP 98-05.
- 5.7.1 Agency management may require a second or third opinion (at its own expense), periodic reports on the employee's status and intent to return to work, and a fitness-for-duty report to return to work.



5.7.2 All documentation related to the employee's or family member's medical condition will be held in strict confidence and maintained in a separate file and file cabinet and not in the employee's personnel file.

5.8 EFFECT ON BENEFITS An employee granted leave under this policy will continue to be covered under the employee's group health insurance plan under the same conditions as coverage would have been provided if they had been continuously employed during the leave period.

5.8.1 Employee contributions will be required whether through payroll deduction or by direct payment to Human Resources. The employee will be advised in writing at the beginning of the leave period as to the amount and method of payment. Employee contribution amounts are subject to any rate changes that occur while the employee is on leave.

5.8.2 If an employee's contribution is more than 30 days late, the State may terminate the employee's insurance coverage.

5.8.3 If the employee fails to return from unpaid family/medical leave for reasons other than (1) the continuation of a serious health condition of the employee or a covered family member or (2) circumstances beyond the employee's control (certification required within 30 days of failure to return for either reason), agency management will seek reimbursement from the employee for the portion of the premiums paid by the State on behalf of that employee (also known as the employer contribution) during the period of leave.

5.8.4 An employee is not entitled to seniority or benefit accrual during periods of unpaid leave, but will not lose leave that was accrued prior to taking unpaid leave.

5.9 JOB PROTECTION If the employee returns to work within 12 weeks following a family/medical leave, the employee will be reinstated to the employee's former position or an equivalent position with equivalent pay, benefits, status and authority.

5.9.1 The employee's restoration rights are the same as they would have been had the employee not been on leave.

5.9.2 If the employee fails to return to work after the 12 weeks of Family and Medical Leave, the employee shall be advised to apply for long-term leave without pay or medical leave without pay pursuant to Personnel Rules R2-412 and R2-5-413. If approved for L/LWOP or M/LWOP the DOA Personnel rules on LLWOP and M/LWOP will apply.

6.0 IMPLEMENTATION: This policy shall be implemented without change on the effective date.

Patrick F. Chorpenning, Director

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Supplements information regarding FMLA addressed in IMP 98-05. The policy provides definitions and much greater detail about the process of requesting FMLA leave.